(1)

Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

FRANK McLAIN and HARLEY McLAIN

Petitioners,

v.

GEORGE W. BUSH, et al.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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44pgs

QUESTIONS PRESENTED

(1) Who really won the Presidential Election of 2000? Everyone knows the identity of the candidate who "politically" and "legally" won the Presidential election of 2000; but here the petitioners seek to identify what factors, in light of the Equal Protection Clause of the 14th Amendment, went into determining how the candidate who won did so by violating the constitutional *rectum* of the petitioners. He took their rights and "wrecked um"?

(2) Do the edicts in the decision of *Bush v Gore* relevant to the unique nature of the 2000 Presidential election affect petitioners' standing so that the Supreme Court is in the untenable position of being forced to confront the petitioners' equal protection questions?

(3) Have both George W. Bush and Albert Gore and their political parties availed themselves to the jurisdiction of the federal courts as Presidential candidates thus providing standing for a suit in equity for violations of the civil rights of the petitioners and any other individual voters in any and all states where they have been certified and qualified as candidates?

(4) Did the District Court and Appeals Court error by not granting the *pro se* petitioners the opportunity to amend their complaint?

(5) Did the Democratic and Republican Parties and their Presidential candidates conspire together to defraud the electorate by limiting access to the Presidential Debates in 2000?

(6) Did George W. Bush in Texas and Jeb Bush in Florida as individuals violate Harley McLain's right to equal protection of the law in a Presidential election by enforcing incumbent-first ballot formats which contravened edicts of a 1980 federal judgment in North Dakota?

(7) Does a petitioner with a federal judgment regarding constitutional election practices have standing to challenge legislation created outside of petitioner's district but within the territory of the United States in a national Presidential Election?

(8) Can a certified copy of a federal declaratory judgment showing that petitioners prevailed in proving a violation of petitioners' equal protection rights be considered as specific evidence of personal harm having been suffered by petitioners?

(9) The Supreme Court in this case is presented with three equal protection questions relating to the Presidential Election of 2000 concerning:

1. the uniformity of standards and fairness of various balloting formats – see question # 10.,
2. voter registration restrictions within the several states – see question # 11.,
3. and conspiracy to defraud the electorate by limiting access to the Presidential Debates – see question # 5.

(10) Did the individual election officials of the states that did not implement rotating balloting formats violate the federally established right to equal protection of the law of the petitioner who has a federal judgment when the rights in question cross over into the sphere of federal jurisdiction by the unique nature of the Presidential election?

(11) Did the individual election officials of the 44 states that enforced registration deadlines prior to the day of the Presidential election unfairly restrict voters from participating equally in the Presidential election in violation of the Fourteenth Amendment?

(12) Does the long arm statute of the state of Montana grant the petitioners the scope of personal jurisdiction necessary to exercise adjudication of this case under the Fourteenth Amendment?

(13) When a governor of a state is elected to the federal office of President using unconstitutional state statutes which he enforced in his state or district and which worked to his advantage in several other states and districts to procure such office, did he contravene, create an incursion, and violate the federal Constitutional rights to equal protection of the law of a voter with a federal judgment that disallows this unfair advantage in another state or district of the Republic? Does he, the former governor and present "President" not avail, invite, and subject himself to a suit in equity when challenged by the voter with the federal constitutional

judgment when he accepts the office of President and avail, invite, and subject himself to the jurisdiction and scrutiny of the federal courts for his neglect of duty as a governor to the voter with a protected political right in the federal sphere of sovereignty?

(14) What remedies are available to the petitioners who are common run-of-the-mill voters, one of whom has been denied his right to vote by a state-imposed early voter registration deadline, and both of whom have been denied a federally established right to fair balloting practices by the elected individuals in various states acting under the color of law in a federal Presidential Election?

(15) In the federal election of President has a person who has been denied the right to vote because of restrictive registration statutes suffered personal concrete harm?

LIST OF PARTIES

George W. Bush
Richard Cheney
Albert Gore
Joseph Lieberman
Republican National Committee
Jim Nicholson
Democratic National Committee
Ed Rendell
The Commission on Presidential Debates
Paul Kirk
Frank Fahrenkopf
Marc Racicot
Mike Cooney
Joseph P. Mazurek
Jeb Bush
Katherine Harris
Robert A. Butterworth
Elton Bomer
John Cornyn
Donald Siegelman
Jim Bennett
Bill Pryor
Tony Knowles
Fran Ulmer
Bruce M. Botelho
Jane Dee Hull
Betsey Bayless
Janet Napolitano
Mike Huckabee
Sharon Priest
Mark Pryor
Gray Davis
Bill Jones
Bill Lockyer
Bill Owens
Ken Salazar
John G. Rowland
Susan Bysiewicz
Richard Blumenthal
Thomas R. Carper
Edward J. Freel
M. Jane Brady
Beverly D. Rivers
Robert Rigsby
Roy Barnes
Cathy Cox
Therbert Baker
Benjamin J. Cayetano
Mazie Hirono
Earl Anzai
Dirk Kempthorne
Pete T. Cenarrusa
Alan G. Lance
George H. Ryan
Jessie White
Jim Ryan
Frank O'Bannon
Sue Anne Gilroy
Karen Freeman-Wilson
Tom Vilsack
Chet Culver
Tom Miller
Bill Graves
Ron Thornburgh
Carla J. Stovall
Paul E. Patton
John Y. Brown
Albert Benjamin Chandler III
Mike Foster
W. Fox McKeithen

Donetta Davidson
Angus S. King
Dan A. Gwadoski
Andrew Ketterer
Parris N. Glendening
John T. Willis
J. Joseph Curran, Jr.
Argeo Paul Cellucci
William Gavin
Tom Reilly
John Engler
Candice Miller
Jennifer Ganholm
Jessie Ventura
Mary Kiffmeyer
Mike Hatch
Ronnie Musgrove
Eric Clark
Mike Moore
Roger Wilson
Rebecca Cook
Jeremiah W. "Jay" Nixon
Mike Johanns
Scott Moore
Don Stenberg
Kenny C. Guinn
Dean Heller
Frankie Sue Del Papa
Jeanne Shaheen
William Gardner
Philip T. McLaughlin
Christeen T. Whitman
Deforest Soaries
John Farmer
George E. Johnson
Rebecca Vigil-Giron

Richard P. Ieyoub
James B. Hunt, Jr.
Elaine Marshall
Michael F. Easley
Edward T. Schafer
Alvin A. Jaeger
Heidi Heitkamp
Bob Taft
J. Kenneth Blackwell
Betty D. Montgomery
Frank Keating
Mike Hunter
W.A. Drew Edmondson
John A. Kitzhaber, MD
Bill Bradbury
Hardy Myers
Tom Ridge
Kim Pizingrilli
Mike Fisher
Lincoln Almond
James Langevin
Sheldon Whitehouse
Jim Hodges
Jim Miles
Charlie Condon
William J. Janklow
Joyce Hazeltine
Mark Barnett
Don Sundquist
Riley Darnell
Paul Summers
Michael O. Leavitt
Olene S. Walker
Jan Graham
Howard Dean, MD
Deb Markowitz

Patricia Madrid
George E. Pataki
Alexander F. Treadwell
Eliot Spitzer
Gary Locke
Ralph Munro
Christine O. Gregoire
Cecil H. Underwood
Ken Hechler
Darrell V. McGraw, Jr.
Tommy G. Thompson
Douglas La Follette
James E. Doyle
Jim Geringer
Joe Meyer
Gay Woodhouse
Janet Reno
William H. Sorrell
James S. Gilmore III
Anne P. Petera
Mark L. Earley

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ..... iv, v, vi

TABLE OF AUTHORITIES ..... ix, x

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 2, 3

REASONS FOR GRANTING THE PETITION 3,4,5,6,7,8

A. The Ninth Circuit's Not For Publication Memorandum Is In Conflict With The Supreme Court's Decision In *Haines v. Kerner* 404 U.S. 519 (1972) And With The Eighth Circuit's Decision In *McLain v Meier* 612 F.2d 349 At 356 (1979). The Ninth Circuit Erred By Overlooking The District Court's Abuse Of Judicial Discretion In The Granting Of Summary Judgment To The Defendants. The Ninth Circuit Should Have Overturned The Order Of The District Court For Not Construing Pro Se Pleadings Liberally In Their Favor And For Its Failure To Grant Or Instruct The Pro Se Litigants With An Opportunity To Amend Their Complaint.

B. The Petition For Certiorari Should Be Granted To Maintain Uniformity And Equality Between Various Circuit's Decisions In Regard To Equal Protection Questions Concerning Ballot Positioning Schemes And Voter Registration Restrictions And To Consider The Effect Such Schemes And Restrictions Have On The Presidential Election Process.

C. The Recent Supreme Court Decision Of *Bush v Gore* Exemplifies The Importance That Equal Protection Of The Law Be Afforded To Voters In All States Because The President And The Vice President Of The United States Are The Only Elected Officials Who Represent All The Voters In The Nation. The Ninth Circuit's Decision Not To Grant Standing Is In Conflict With The Unique Jurisdictional Status Which The Court Recognizes When Presented With Federal Questions Related To The Election Of The President. Throughout *Bush v Gore* The Supreme Court Sets Forth Its Unique Constitutional Responsibility To Undertake An Independent, If Not Deferential, Analysis Of Various State Legislatures' Roles Under Article II In The Matter Of The Manner In Which Presidential Electors Are Chosen. The Supreme Court Has Recognized Therein That When A State's Legislature, Acting Under Article II, Section 1 Of The Federal Constitution, Vests The Right To Vote For Presidential Electors In The State's People; One Source Of The Fundamental Nature Of The Right To Vote As The Legislature Has Prescribed Lies In The Equal Weight Accorded To Each Vote And The Dignity Owed To Each Voter. Pursuant To The Equal Protection Clause Of The Constitution's Fourteenth Amendment, The Petitioners Have Standing And Should Be Granted Certiorari Because They Have Suffered An Injury To Their Basic Human Right To Vote On Equal Terms For The President Of The United States By The Named Respondents In Their Various Districts. Furthermore, The Process And Manner In Which The President Is Elected Is Of National Importance.

CONCLUSION 8, 9

TABLE OF AUTHORITIES

Page

Cases

Bush v. Gore, 531 US --, 148 L Ed 2d 388. 121 S Ct -- (Dec. 12, 2000)... .....3,4, 5, 6, 7, 8

McLain v. Meier, 612 F.2d 349 (1979).....vii, 4

McLain v. Meier, 637 F.2d 1159 (1980).....2, Appendix 4b

Haines v. Kerner, 404 U.S. 519 (1972)..... vii, 4

Statutes

3 USC 1-20 2

3 USC 5 6

3 USC 6 1,2

3 USC 15 1,2

28 USC 1254 1

28 USC 1331 2

28 USC 1343 ..... 2, Appendix 3c

42 USC 1983 ..... 1,8, Appendix 2c

42 USC 1985(3) ..... 2, Appendix 3c

Montana Statute 13-2-301 (1)(a) ..... 2, Appendix 4c

NDCC 16-11-06 ..... Appendix 7b, 4c

TABLE OF AUTHORITIES - continued

Florida Title 9 Sec. 101.151.(4) ..... 3,7, Appendix 4c

Texas Title 5 Sec. 52.091(b) ..... 3,7, Appendix 5c

N.H. Title LXIII, Ch. 656:5,II ..... 3,7, Appendix 5c

Declaration of Independence..... Appendix 1c

United States Constitution Preamble..... Appendix 1c

Article II, Section 1, Clause 2 ..... 5, 6

Article III, Section 2 ..... Appendix 1c

Article IV, Section 1, 2 (1), 4 ..... 5, Appendix 1c

Amendment I ..... 1, Appendix 1c

Amendment XII ..... 1, Appendix 2c

Amendment XIV ..... 1, Appendix 7b, 2c

PETITION FOR A WRIT OF CERTIORARI

Frank McLain and Harley McLain respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this Case.

OPINIONS BELOW

The opinions below are unreported. The Ninth Circuit Court of Appeals filed a NOT FOR PUBLICATION MEMORANDUM No. 01-35373, D.C. No. CV-00-00222-JDS on January 25, 2002, an ORDER was entered on March 8, 2001 Cause No. CV 00-222-BLG-JDS and the FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE was filed February 9, 2001 Cause No. CV 00-222-BLG-RWA. See Appendix A.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 and in accordance with Rule 10 of the Rules of the Supreme Court of the United States to review the Memorandum filed by the United States Court of the Ninth Circuit No. 01-35373; D.C. No. CV-00-00222-JDS filed January 25, 2002.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT I
AMENDMENT XII
AMENDMENT XIV
3 USC 6
3 USC 15
42 USC 1983
42 USC 1985(3)
Montana Statute 13-2-301(1)(1) Close of Registration
NDCC 16-11-06
Florida Title 9 Sec. 101.151.(4) Incumbent first ballot
Texas Title 5 Sec. 52.091(b) Incumbent first ballot

See Appendix C for Statutes

N.H. Title LXIII, Ch. 656:5,II Incumbent first ballot
McLain v Meier, 637 F.2d 1159(1980)

I. STATEMENT OF CASE

Frank and Harley McLain filed a complaint in U.S. District Court in Billings, Montana on December 11, 2000 pursuant to Title 42 USC 1983 and 1985 (3). The petitioners sought injunctive relief, mandamus, and monetary damages hoping to halt the Governors, Attorney Generals, and Secretaries of State from certifying and transmitting the Presidential Electors' votes to Congress as prescribed in 3 USC Sections 1-20 until the underlying legal issues presented herein could be considered. The petitioners also claimed that the Presidential Debates were set up to defraud the public by the Democratic and Republican parties in violation of 42 USC 1985.

On February 9, 2001 Magistrate Judge Richard W. Anderson issued Findings and Recommendations, and on March 8, 2001 Judge Jack D. Shanstrom dismissed the cause of action for lack of standing. The petitioners appealed to the Ninth Circuit Court of Appeals which on January 25, 2002 issued a "Not for Publication" MEMORANDUM affirming the district court decision. Appellant jurisdiction was invoked pursuant 28 USC 1291 and in the District Court under Title 28 USC 1331 and 1343 because the petitioner raised a federal question.

Petitioners respectfully request review of the Ninth Circuit Court's Memorandum.

II. STATEMENT OF FACTS

Frank and Harley McLain are challenging 163 individuals (150 elected state officials) and two private political parties for the roles they played acting under color of law in electing the President of the United States in the 2000 election. Frank McLain was denied has right to vote in the federal Presidential election in 2000 by an early registration statute in Montana. Frank McLain procured an absentee ballot from his former state of residence Minnesota but a snowstorm prevented him from being able to cast a timely vote for President. Frank McLain's absentee ballot is in the U.S. District Court in Billings, Montana awaiting disposition of this case. (See Frank's affidavit) Harley McLain has a federal declaratory judgment from the U.S. District Court in North Dakota defining the format and

makeup of a constitutional ballot. Harley McLain lost his federally established right to equal treatment of the law when ballots in several of the states (including Florida, Texas, New Hampshire, Delaware, etc.) during the 2000 Presidential election used obsolete and unfair incumbent-first ballot formats which "granted one group greater voting strength than another in hostility to the one man, one vote basis of our representative government." (See Harley's Affidavit)

The McLains are in court to redress the injuries they have suffered and seek just compensation from those who are responsible for the invidious violations of their rights.

III. REASONS FOR GRANTING THE PETITION

Within *Bush v Gore* is the affirmative answer to granting standing to the petitioners to pursue their constitutional claims in federal court because the Ninth Circuit and the Montana U.S. District Court have settled an important federal question in a way that conflicts with the relevant decisions expressed therein.

In *Bush v Gore* the Supreme Court protected George W. Bush's right to equal protection of the law under the Fourteenth Amendment because "there was no recount procedure in place, under that judgment, that comported with minimal standards required under the Fourteenth Amendment," and " the court's recount mechanisms did not satisfy the minimum requirements for the nonarbitrary treatment of voters that was necessary to secure the fundamental right to vote as the state's legislature had prescribed" *Bush v Gore(2000) 148 L Ed 2d, 390.* Chief Justice Rehnquist found "that the Florida Supreme Court's interpretation of the state's election laws impermissibly, in violation of Art II, Section 1, cl 2, distorted those laws beyond what a fair reading required."

Bush v Gore defined the relationship between the Democratic and Republican candidates for President in conjunction with Florida in terms of equal protection of the law for recounts. What the litigants neglected to mention (covered-up) was how that decision didn't take into account the effect of the unequal ballot positioning scheme in Florida which allowed George W. Bush an unfair ballot positioning advantage over the other candidates which allowed George W. Bush to win the election. The present case exposes the effect that the Florida incumbent-first balloting

scheme had on the election results nationwide and on the equal protection rights of the petitioners.

There is no doubt that the Petitioners have standing for they have suffered egregious, concrete, and personal harm from having lost their First Amendment right to representation in government. The U.S. District Court and Ninth Circuit have even failed to recognize the evidence Frank McLain presented before them in the form of an uncounted Minnesota absentee ballot and in the form of Harley McLain's federal declaratory judgment declaring incumbent-first balloting schemes as a violation of the Equal Protection Clause of the Fourteenth Amendment. Does the Court require a pound of flesh? Or must one bring forth a body or a severed tongue to prove that his right to life and liberty, expression and association has been violated?

The Montana Federal District Court and the Ninth Circuit Court have so departed from the accepted and usual course of judicial proceeding as to call for an exercise of this Court's supervisory power. The petitioners were never given an opportunity to amend their original complaint nor allowed to appear for a hearing before a judge. The District and Appeals Courts have decided by default these important questions of federal law. Possibly because these questions should be settled by the Supreme Court. By sidestepping the federal questions with their bogus "lack of standing" biases, the Ninth Circuit Court and the District Court have decided an important federal question in a way that conflicts with the relevant decisions of the Supreme Court as stated in *Bush v Gore* 148 L Ed 2d.

The dicta found in *Bush v Gore,* 148 L Ed 2d 388,403 (2000) legitimizes the uniqueness of the Presidential election process and validates the jurisdictional standing that these petitioning voters claim in relationship to the challenged candidates and officials.

> "We deal here not with an ordinary election, but with an election for the President of the United States." *Bush* at 403.
>
> "Likewise in *Anderson v Celebreezze,* we said: "[I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation."

This expanded jurisdictional dimension mandated in *Bush* applies

in this case because of the nature of Article II of the Federal Constitution in relationship to the national Presidential election and the Equal Protection Clause of the Fourteenth Amendment.

Quoting the Court,

> "[I]n ordinary cases, the distribution of powers among the branches of a State's government raises no questions of federal constitutional law, subject to the requirement that the government be republican in character. See US Const., Article IV, Section 4. But there are a few exceptional cases in which the Constitution imposes a duty or confers a power on a particular branch of a State's government. This is one of them. Article II, Section 1,cl 2, provides that "[e]ach State shall appoint, in such Manner as the *Legislature* thereof may direct," electors for the President and Vice President. Thus, the text of the election law itself, and not just its interpretation by the courts of the States, takes on independent significance."

Within the confines of *Bush v Gore* at 398, the Supreme Court validates an expanded jurisdiction in cases dealing with Presidential elections in which

> "lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment."

furthermore

> "When contending parties invoke the process of the courts, it becomes our unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront." *Bush* at 402.

The dicta found in *Bush* at 403 lends credence for the Supreme Court to accept this case to resolve the "legal" issues surrounding the political process of the 2000 Presidential election. The petitioners in the present case are asking to "vindicate a constitutional provision designed to protect a basic human right." *Bush* dissent at 428.

When George W. Bush petitioned the Court he invoked fundamental fairness as a need for procedural fairness in the form of finality. George W. did not invoke "equal protection" upon a basic need but relied upon law that focused upon the constitutional allocation of power. That power is invested in the state legislature which has to guarantee that the Electoral College votes will get to Congress to be included in the national Presidential Election.

In *Bush* at 394 it recognizes that, "Under the Federal Constitution's Fourteenth Amendment , a desire for speed is not a general excuse for ignoring equal protection guarantees." But perhaps the Justices did rush to judgment before all of the implications of their verdict could be presented. The petitioners McLain have been patiently waiting for the opportunity to present their case and to have it seriously considered. The finality of the equal protection which George W. Bush sought from the Court has been received by him. Now, Frank and Harley McLain seek just compensation from George W. Bush and his cohorts in conspiracy for violations of their basic right to equal protection of the law in a fair and free Presidential election of which they were denied in 2000.

The petitioners have jurisdictional standing and as individual citizens have a federal constitutional right to vote for electors for the President of the United States because the state legislatures in Montana and North Dakota have chosen a statewide election as the means to implement the legislature's power to appoint members of the electoral college as required under Article II, Section 1 of the Federal Constitution as recognized in *Bush v Gore* 148 L Ed 2d 394.

Article II binds the States together as one jurisdictional nation in the process of the election of the President.

The Supreme Court in *Bush v Gore* also recognized,

> "When a state's legislature, acting under Article II, Section 1 of the Federal Constitution, vests the right to vote for Presidential electors in the state's people, one source of the fundamental nature of the right to vote as the legislature has prescribed lies in the equal weight accorded to each vote and the equal dignity owed to each voter; pursuant to the equal protection clause of the Constitution's Fourteenth Amendment, the right to vote is protected in more than the initial allocation of the franchise, for (1) equal protection applies as well to the manner of the exercise of the franchise, and (2) the state, having once granted the right to vote on equal terms, may not, by later arbitrary and disparate treatment, value one person's vote over that of another; the right to suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Supra p 394.*

The Ninth Circuit Court of Appeals' ruling to quash jurisdiction

upon lack of standing due to state boundaries or jurisdictional borders which separate the parties one from the other are contrary to the edicts found throughout *Bush v Gore*. The Bush Court relies on 3 USC Section 5 that

> "there are areas in which the Constitution requires this court to undertake an independent, if still deferential, analysis." *Bush* at 404. "In any election but a Presidential election....and with respect to a Presidential election, the court must be mindful of the legislature's role under Article II in choosing the manner of appointing electors....*Bush* at 404.

Be that as it may, such dicta invites the court to examine the disparities which elected officials and legislative bodies enforced in several of the states (especially Florida) which may have been uniform in nature but which were not equitable and which have distorted the election laws in those states beyond what a fair reading requires.

Petitioners have pre-eminent and practical legal concerns which require the case at hand to be heard by the United States Supreme Court.

The petitioners have suffered specific and significant injuries to their basic human right to vote and to their right to have a vote which is equal in value to other votes. Petitioners pray for a remedy fashioned to compensate for their injuries. To secure this basic human need, the petitioners are appealing to the Nation's highest judicial forum because it is highly unlikely that the "legislative bodies nationwide will examine ways to improve the mechanisms and machinery for voting" without judicial guidance. This is not a trivial concern, and petitioners realize with another election fast approaching that the issues in question are capable of repetition if allowed to evade review. "The press of time does not diminish the constitutional concern," and "unavoidably this Court must sometimes examine state law in order to protect federal rights" *Bush v Gore* p 418. Petitioners believe that this is one of those times.

This is not a case which would "disrupt a State's republican regime", but would protect voters in the States where votes are weighted equally because of the equal rotation position of candidates on the ballot from States which allow votes to be weighted unequally due to incumbent-first ballot schemes which violate the Equal Protection Clause of the Fourteenth Amendment. These ballot inequities have caused a distortion of the intent of the voters in the 2000 Presidential election so that the election results were skewed. The Florida, Texas, and New Hampshire

incumbent-first ballots ran afoul of equal protection and skewed the overall election results in favor of a candidate for whom it was not the intention of the voters to choose.

In *Bush v Gore,* the Supreme Court determined that a "legal vote" is "one in which there is a 'clear indication of the intent of the voter.' " If the ballot is weighted heavily in favor of one candidate by his top position on the ballot in a close election, there can be no legal vote cast because the candidates in the lower position have a Herculean handicap placed upon their shoulders. Therefore the results do not give a clear indication of the intent of the will of the people. "And the people's will is what elections are about."

As succinctly stated by Justice Brandeis of the Court, "The most important thing we do is not doing." *Supra p. 431.* Petitioners' Mother once paraphrased Justice Brandeis as having said "that the most important office in the United States is the office of the citizen." The Supreme Court in *Bush v Gore* did an "important thing" for the elected officers of the government by staying the manual recount of the Florida Presidential Election on Fourteenth Amendment grounds. The District Court and the Ninth Circuit have diddled the "most important office" in the United States by not doing. Perhaps the Supreme Court should do an "important thing" for the citizens of the United States and grant petitioners certiorari.

What the petitioners are seeking from the Supreme Court under 42 USC 1983 & 1985 is a remedy which restores the dignity of their vote, and justly compensates them for their vigilance in protecting their rights. Petitioners hope that the Court instructs them to amend and update their complaint so that at this time a reasonable and equitable remedy can be fashioned and so that due process of law is afforded to all parties who acting under the color of law in the 2000 Presidential election are brought before this court and this court exercise its original jurisdiction. Considering the imminent national importance of this case, and though there may be no precedent to a case like this, this case is the Supreme Court's "unsought responsibility" which is referred to in *Bush v Gore.*

CONCLUSION

Forthwith, Petitioners pray that this court issue a writ of certiorari and order the inferior courts to produce a certified record of this case so that the court may inspect the proceedings and determine whether there have been any irregularities.

Petitioners pray for review on certiorari be granted because the United States District Court in Billings, Montana and the United States Court of Appeals for the Ninth Circuit have decided an important federal question in a way that conflicts with relevant decisions of the Supreme Court, and have so departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

Respectfully submitted,

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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK MCCLAIN; HARLEY MCCLAIN, Plaintiffs- Appellants, v. GEORGE W. BUSH, JR., Governor of Texas and Republican Candidate for President of the United States, individually and in his official capacity; et al., . Defendants- Appellees.	No. 01-35373 D.C. No. CV-00-00222-JDS MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted January 14, 2002**

Before: KLEINFELD, HAWKINS, and SILVERMAN, Circuit Judges.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument, and denies plaintiffs' request for oral argument. *See* Fed. R. App. P. 34(a)(2).

Frank McLain and Harley McLain appeal pro se the district court's dismissal of their 42 U.S.C. 1983, 1985, and 1988 action for lack of subject matter jurisdiction. We have jurisdiction pursuant 28 U.S.C. 1291. We review de novo and may affirm on any ground supported by the record. *Steckman v. Hart Brewing, Inc.,* 143 F.3d 1293,1295 (9th Cir. 1998). We affirm.

Because plaintiffs reside in Montana and North Dakota but did not allege a concrete harm caused by the out-of-state defendants, the district court properly dismissed these claims for lack of standing. *See Shaw v. Hunt,* 517 U.S. 899, 904 (1996) (holding that a plaintiff lacks standing to challenge legislation created outside of plaintiff's district absent specific evidence of personal harm); *United States v. Hayes,* 515 U.S. 737, 743-44 (1995) (indicating that a generalized grievance against allegedly illegal government conduct is insufficient to provide standing).

The district court properly dismissed Harley McLain's claims against the North Dakota defendants because he failed to allege a concrete harm. *See Hayes,* 515 U.S. at 743-44. The district court properly dismissed Frank McLain's claims against the Montana defendants because the complaint was conclusory and did not adequately link defendants to causes of action. *See McHenry v. Renne,* 84 F.3d 1172, 1175 (9th Cir. 1996) (indicating that a complaint must make clear the connections between specific allegations and individual defendants).

Because any amendment of plaintiffs' complaint would be futile, dismissal without leave to amend was appropriate. *See Cahill v. Liberty Mut. Ins. Co.,* 80 F.3d 336,339 (9th Cir. 1996); *Barilla v. Ervin,* 886 F.2d 1514, 1522-25 (9th Cir. 1989) (declaring constitutional Oregon's 20-day voter registration cut off), *overruled on other grounds, Simpson V. Lear Astronics Corp.*, 77 F.3d 1170,1174 (9th Cir. 1996).

Because plaintiffs fail to specifically challenge the remainder of the magistrate judge's findings and recommendation in their opening brief, these arguments are waived. *See Arpin v. Santa Clara Valley Transp. Agency,* 261 F.3d 912,919 (9th Cir. 2001) (holding that issues which are not specifically and distinctly argued and raised in a party's opening brief are waived).

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

Frank McLain and Harley McLain,	)	Cause No. Cv 00-222-BLG-JDS
Plaintiffs	)	
vs.	)	
GEORGE W. BUSH, et al.,	)	ORDER
	)	*******
Defendants	)	

U.S. Magistrate Judge Richard W. Anderson recommends dismissing this case in its entirety for lack of jurisdiction. Plaintiffs' objections thereto are baseless.

After de novo review the Court finds Judge Anderson's Findings and Recommendations well-grounded in law and fact and hereby adopts them in their entirety.

IT IS HEREBY ORDERED

1. All pending motions to dismiss are granted. Plaintiffs' cause of action is dismissed in its entirety for lack of jurisdiction.

2. Plaintiffs' motion for writ of mandamus, motion to expedite, motion for declaratory relief and preliminary injunction, and motion for declaratory judgment and for preliminary and permanent injunctive relief are denied.

The Clerk shall forthwith notify the parties of the making of this order.

DONE and DATED this 8th day of March, 2001.

"s/Jack D. Shanstrom"
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FRANK McLAIN and HARLEY McLAIN	)
	) Cause No.
Plaintiffs,	) CV 00-222-BLG-RWA
	) FINDINGS AND
vs.	) RECOMMENDATIONS OF
	) UNITED STATES
	) MAGISTRATE JUDGE
GEORGE W. BUSH, et al.,	)
	)
Defendants.	)

Pending before the Court are plaintiffs' motion for writ of mandamus, motion to expedite, motion for declaratory and preliminary injunction, and motion for declaratory judgment and for preliminary and permanent injunctive relief. Also pending are several motions to dismiss filed by various defendants in the action.[1] Having considered the briefs of the parties, the Court is prepared to rule.

BACKGROUND

Plaintiffs file this action on December 11, 2000, against the Republican and Democratic Presidential and Vice-Presidential candidates for the year 2000, George W. Bush, Richard Cheney, Al Gore, and Joseph Lieberman; the Republican National Committee; the Democratic National Committee; the Commission on Presidential Debates; Janet Reno, Attorney General of the United States; as well as the Governors, Secretaries of State, and Attorney General of each of the states in the union and the District of Columbia-- some 163 defendants in all.

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[1] By the Court's count as of the date of this writing, 19 motions to dismiss have been filed by various state defendants. The motions assert similar defenses: Eleventh Amendment immunity, standing, personal jurisdiction, failure to state a claim, and failure to comply with Rule 89(a), Fed.R.Civ.P. Three of the motions are fully briefed, and plaintiffs have responded to eight of the others.

Plaintiff Frank McLain, a resident of Montana, challenges the constitutionality of the 30-day residency requirement for registration to vote in elections mandated by Montana and federal law, Statute 13-2-301, MCA, and 42 U.S.C. 1973aa-1(d) and (e). Plaintiff Harley McLain, a resident of North Dakota, challenges the ballot positioning schemes of several states, specifically Florida, Texas, and Delaware, alleging that the location of presidential candidates on the ballots of these various states has placed an unfair burden on his right to vote. Finally, both plaintiffs contend that they were defrauded by the year 2000 presidential debates because the Commission on Presidential Debates enacted criteria which limited the field of candidates eligible for the debates to those of the two major political parties. The complaint seeks injunctive and declaratory relief and money damages in the amount of "One Federal Reserve Note for every vote cast and counted in the Presidential Election of 2000." Complaint at 17.

DISCUSSION

In conjunction with the complaint, plaintiffs filed a motion for declaratory judgment and preliminary injunction and a motion to expedite. In these motions, plaintiffs requested an order enjoining the acceptance, certification, and transmittal of the Democratic and Republican electoral vote to the Electoral College. They also requested a stay of the meeting of the Electoral College scheduled for December 18, 2000, and an order declaring the electoral votes null and void.

Plaintiffs also filed a writ of mandamus in which they requested an order directing the President of the Senate to count plaintiff Harley McLain's vote "and announce the Constitutional President of the United States before both Houses on Congress on or about January 6, 2001." Pls'Brief in Support of Writ of Mandamus at 4.

On December 18, 2000, plaintiffs filed another motion for declaratory and preliminary injunctive relief, this time seeking a permanent injunction as well. In this motion plaintiffs asked the Court to restrain the certification of the Electoral College votes to the President of the Senate during the first week of January 2001.[2]

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[2] Plaintiffs also requested the following injunctive relief:

1. limiting voter participation and equal access to the polling places through unconstitutional prior restraint registration laws which censor at least 3.5% of the voting

Plaintiffs motion for preliminary injunctive relief and writ of mandamus should be denied as moot. The Electoral Votes have been certified to the President of the Senate, and George W. Bush has been sworn into office as the President of the United States. Thus, the Court is unable to either enjoin the actions of the Electoral College or direct the Senate President to count plaintiff Frank McLain's vote. Issues are moot where, as here, the Court is unable to grant the relief requested because the events sought to be enjoined have already occurred. *American Rivers v. National Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997).

This does not necessarily mean, however, that the entire case has been mooted by the inauguration of President Bush. Claims concerning the constitutionality of election laws are not mooted once an election has occurred. *Storer v. Brown,* 415 U.S. 724, 737 n. 8(1974). Because the laws may affect future elections, such controversies usually fall into the category of claims that are "capable of repetition, yet evading review." *Id.*(quoting *Rosario v. Rockefeller,* 410 U.S. 752,756 n. 5(1973).

First, plaintiffs lack standing to pursue the claims asserted in this action, with the exception of plaintiff Frank McLain's claim concerning Montana and federal voter registration laws. Of all of the jurisdictional doctrines, "standing 'is perhaps the most important ....' " *United States v. Hays,* 515 U.S. 737,742 (1995)(quoting *FW/PBS,Inc. v. Dallas,* 493 U.S. 215, 230-231 (1990)). "To establish standing, [a plaintiff] must demonstrate a personal injury that is fairly traceable to the [defendant's] conduct." *Fund for Animals, Inc. v. Lujan,* 962 F.2d 1391,1395 (9th Cir.1992). A plaintiff with only a generalized grievance against allegedly illegal conduct does not have standing to invoke the judicial power of the federal courts. *Hays,* 515 U.S. at 743. Instead, the plaintiff must demonstrate the following three elements:

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public in any given election in violation of the First and Fourteenth Amendments to the Constitution,

2. using any unconstitutional non-rotating ballot positioning schemes whereby Defendants' candidates receive the top position on all the ballots giving an unfair "definitive statistical advantage of at least five (5) percent"...

3. setting up debates which unfairly exclude all other candidates and parties....

Pls' Motion for Declaratory Judgment and Preliminary and Permanent Injunctive Relief.

> First, the plaintiff must have suffered an 'injury in fact'-an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of... Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Id. at 742-43 (quoting *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992)).

Here, very liberally construing the allegations of the complaint and plaintiff Frank McLain's attached "affidavit," it appears that Frank, a resident of Montana, was unable to vote in the 2000 Presidential election because he had not registered 30 days prior to the date set for the election as required by Section 13-2-301, MCA. Frank requests a declaration from the Court that *all* laws that restrict voters from registering at the polls the same day as the election violate the First and Fourteenth Amendments.

Although Frank may have standing to pursue his claim that the Montana law violated his constitutional rights, he cannot assert claims against the other state defendants because he did not suffer any direct personal injury as a result of those laws. Frank can assert only a generalized grievance that other voters may have been harmed by the registration laws of other states. Plaintiff has no standing to pursue claims on behalf of other voters. *See, e.g., Shaw v. Hunt,* 517 U.S.899, 904(1996) (Persons who reside outside district which was the subject of a racial gerrymandering claim had no standing.)

Plaintiff Harley McLain contests the ballot positioning schemes of several states. Harley admits, however, that the ballot used by North Dakota, where he cast his vote, was constitutionally valid. Nevertheless, he wishes to challenge the ballots of the other states in which he was neither registered to vote nor attempted to vote.

Harley, like Frank, has no standing to assert these claims because he has failed to assert any direct personal injury. The fact that he may feel aggrieved because other voters may not have had the same fair ballot that he had is insufficient to establish standing.

Nor have plaintiffs established that they have standing to assert the debate fraud claim.[3] Plaintiffs contend that the Commission on Debates

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[3] Although the issue of standing as it pertains to this claim has not been addressed by any of the parties who have appeared, the Court brings it up *sua sponte.* The Court is obligated to examine its own jurisdiction, even if the question has not been raised by the

improperly restricted the marketplace of ideas by allowing only candidates Bush and Gore to participate in the debates. Plaintiffs do not assert, however, that they personally attempted to participate in the debate or even that a candidate of their choice was refused permission to participate. Indeed, Harley affirmatively states that his candidate was Al Gore, one of the participants in the debate. Once again, plaintiffs' grievance is only a generalized one and is insufficient to invoke the jurisdiction of this Court.

In addition to finding that plaintiffs lack standing to assert all but one of their claims, the Court concludes that the Eleventh Amendment to the United States Constitution provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of Subjects of any Foreign State.

In this case, plaintiffs have not named any state as a defendant. Instead, they have named state officials. The Court must inquire, therefore, in what capacity the defendants are sued in order to determine whither the suit is in reality one against the State. *Pennhurst State School & Hosp. v. Halderman,* 465 U.S. 89, 101 (1984). If the state is the real party in interest, the suit is against the state itself and is therefore barred, even if the suit nominally names a state official as the defendant. *Id. at 101-02.*

An exception to this rule is found in *Ex parte Young,* 209 U.S. 123 (1908), where the Court held that a plaintiff may maintain a suit challenging the constitutionally of a state official's action, because such a suit is not against the state itself. Even so, such suits must seek only prospective relief and not monetary damages. *Edelman v, Jordan,* 415 U.S. 651 (1974).

The Court finds that the claims against the state defendants in this case are barred by the Eleventh Amendment. Although plaintiffs have named individual state officials in the caption of the complaint, they have no where in their detailed pleadings and affidavits indicated what action any of these particular individuals took that infringed upon plaintiffs' constitutional rights. The Court can only conclude, therefore, that the state officials are nominal defendants only, and that the claims are in reality those against the individual states and the District of Columbia.[4]

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parties. *Hays,* 515 U.S. at 742.

[4] Even if plaintiffs had alleged that the individual state defendants had engaged in some

This discussion pertains to the Montana defendants, as well as the other state officials. Although the Eleventh Amendment on it face applies only where a citizen is suing a state other than his own, the immunity has been extended to prohibit suits brought by a citizen against his own state. *Hans v. Louisiana,* 134 U.S. 1 (1890). Thus, even though Frank McLain may have standing to assert his claims against the Montana officials who enforced the allegedly unconstitutional voter registration law, he has failed to properly plead his complaint to indicate who that official was.[5] Accordingly, Frank's claims against the Montana defendants are proscribed by the Eleventh Amendment.

Finally, the Court finds that it does not have jurisdiction over Attorney General Janet Reno. Plaintiffs have joined Reno in this Action because they question the constitutionality of 42 U.S.C. 1973aa-1(d) and (e). Under the Little Tucker Act, 28 U.S.C. 1346(a)(2), federal district courts are empowered to hear constitutional challenges to federal statutes only if plaintiffs seek damages of less than $10,000.[6] Here, plaintiffs seek

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particular unconstitutional activity, plaintiffs' claims would still fail because, as previously discussed, they have no standing to pursue their claims against any of the state defendants except Montana. Therefore, even though leave to amend should be freely granted, especially where plaintiffs are pro se, it need not be granted if the amendment would be futile. *Noll v. Carlson,* 809 F.2d 1446,1448 (9th Cir. 1987).

[5] Rather than alleging that Montana officials illegally enforced the law, plaintiff claims that the officials violated his rights by "adopt[ing] into legislation voter registration laws...." Complaint at 8. Thus, not only is Frank's claim barred by the Eleventh Amendment, the Montana officials are also protected by the doctrine of legislative immunity. *Supreme Court of Virginia v. Consumers Union of United States, Inc.,* 446 U.S. 719 (1980).

As noted above, courts are directed to construe pro se pleadings liberally and to allow amendment of deficiently pleaded complaints. Nevertheless, the Court need not create claims where there are none. Plaintiffs have restricted their pleading to the legislative activities of the Montana officials. The Court will not read the pleadings so expansively as to find a way for plaintiffs to state a claim against the Montana defendants that is not prohibited by the Eleventh Amendment, the doctrine of legislative immunity, or some other jurisdictional bar.

[6] 28 U.S.C. 1346(a)(2) provides in pertinent part:

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Claims, of :...

damages well in excess of this amount. Accordingly, the Court lacks jurisdiction over the challenge to the constitutionality of the federal statute.

RECOMMENDATIONS

In accordance with the foregoing, the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. 636(b)(1)(B), RECOMMENDS that plaintiffs' motion for writ of mandamus, motion to expedite, motion for declaratory and preliminary injunction, and motion for declaratory judgment and for preliminary and permanent injunctive relief be denied.

The Magistrate Judge further RECOMMENDS that all of the pending motions to dismiss be granted and that this case be dismissed in its entirety for lack of jurisdiction.

Under 28 U.S.C. 636(b) and Rule 72(b), Fed.R.Civ.P., the parties shall have 10 days following receipt of these recommendations to serve and file written objections, or objection is waived.

The Clerk of Court shall notify counsel of record and plaintiffs of the making of these findings and recommendations. Plaintiffs are cautioned that they must keep the Court advised of any change of address.

DONE and DATED this 9th day of February, 2001.

"s/Richard W. Anderson" , United States Magistrate Judge

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(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, of any Act of Congress, or any regulation of an executive department...

AFFIDAVIT OF FRANCIS L. McLAIN

My name is Francis L. McLain. I am also known as Frank McLain. I am a citizen of Montana and of the United States. I am also a voter.

I moved my residency to Park County Montana from Hennepin County Minnesota in June 1999.

At about 8:30 AM on the morning of November 2, 2000, I went to the Park County government Center to convert my Minnesota Driver's License to a Montana Driver's License and to register to vote in the Presidential Election of November 7, 2000. I was granted my Montana Driver's License on the spot, and was told that I could register to vote in Montana, but was denied the right to vote in the upcoming November 7th election because they said I had to register to vote 30 days before the election. This surprised me, and made me wonder how many other voters have been turned away from the election polls on a similarly discriminatory basis (or by such a capricious rule). I thought this was preposterous.

Having been a voter in Minnesota, I knew that if I were in Minnesota, I could have registered the very day of the election if another registered voter in Minnesota would vouch for me having been a resident for over 30 days. Now, since I had crossed the State line and moved to Montana, suddenly I had lost my right to vote. My vote is precious to me. It is the best way that I can freely and privately express my values and my viewpoint on life, liberty, and the pursuit of happiness without any intimidation. I would like to feel that my vote can make a difference, and that the opinions through my vote are valued.

I went home miffed and called my mother in Minneapolis to see if there was still a chance to be able to vote as an absentee. My mother gave me the number of where to reach my former voter registrar in Hennepin County in Minnesota.

I thereby made a long-distance call to the phone number for voter registration in Hennepin County Minnesota. I was put on hold for about 12 to 15 minutes before I was able to talk with someone in person about how to ask for and receive an absentee ballot. I was told that I had to fax a statement about my present circumstances and why I would not be able to be in Minnesota to cast my ballot on election day. Basically I was told I had to fabricate a scenario of why I was here in Montana so it would seem that I was still a Minnesota resident. I was asked to show the address of

my old Minnesota residence, and give the address in Montana to where the absentee ballot was to be sent. I had to sign and date the request. I was also told that I would have to receive the ballot by Monday November 6th, and then overnite the ballot to be received back in Minnesota by November 7th, or my vote would not count. I felt I was put under unnecessary pressure emotionally and financially just so I could cast my vote.

Still I believe it is my responsibility as well as my right to vote. I thereby faxed a letter directly to the voter registration office in Hennepin County Minnesota on that Thursday afternoon at about 2:30 PM Montana time, and had to trust that I would receive the ballot by Monday Noon on November 6th (when the U.S. mail usually comes to my rural residence in Montana), so that I could mark my ballot and have enough time to drive into town and overnite it back (at a cost of $11.75) by the 3:00 PM deadline which the Livingston office of the US Post Office gives for next-day US Express Mail.

In order to vote this time, it was going to cost me dearly. I was going to have to take a good portion of a day off from my business in order to have the time and logistics to receive my ballot, fill it out, have it witnessed, and overnite it back to Minnesota. Unfortunately, there was a heavy snowstorm on Sunday night and early Monday morning, and thereby all mail was delayed that fateful Monday. My mail with the absentee ballot did not reach me until 4:30 PM on that day. Therefore, I was left "out-in-the-cold", and felt totally disenfranchised because my vote would not make it to the officials on time to be counted on November 7th.

While watching the election results on the next three days on November 7th, 8th, and 9th, because of all the attention focused on the closeness of the Florida results, I was surprised to find out that absentee ballots in Florida would still be counted 10 days after the election if the postmark on those ballots was made on or before November 7th.

A question came to me, why was I told that I had to have my ballot physically in their office on November 7th in order for it to be counted? Why should there be any difference in the federal election procedures from state to state? I realized that many people are cut off from their right to vote because of voter registration laws which place too heavy a burden on the common person who has recently moved or who has never been registered or who is not near a polling place on election day.

It pains me to think that my personal right to vote has been usurped. I still want my absentee ballot to count in this election. That is why I filed this lawsuit in good faith, that this court will grant me the relief that I implore. I have enclosed the absentee ballot, which I consider sacred, and trust that this court will deliver it into the hands of justice, so that my right is secured and my voice is heard.

"s/Francis L. McLain"
Francis L. ("Frank") McLain
82 McDonald Creek Road
Livingston, Montana 59047

Below is a copy of Frank McLain's absentee ballot return envelope being held as evidence with District Court

WARD_____ PRECINCT _____

ELECTION DATE _____

REVISED 2000 ELECTION SYSTEMS & SOFTWARE 62AVE OS

ABSENTEE BALLOT RETURN ENVELOPE

NO POSTAGE STAMP NECESSARY
POSTAGE HAS BEEN PREPAID BY:

CITY OF MINNEAPOLIS ELECTIONS DEPARTMENT
350 SOUTH 5TH STREET RM 1B
MINNEAPOLIS MN 55415-1396

AFFIDAVIT OF HARLEY McLAIN

My name is Harley McLain. I am a citizen of North Dakota and the United States. I am also a voter.

When I voted in November 2000, I knew that my vote for President would be represented at the meeting of the Electoral College on December 18, 2000 only if the candidate for whom I voted could garner the plurality of the popular vote in North Dakota. I knew that the candidate who did so would get all three of North Dakota's Electoral College votes.

As it turned out, the Bush/Cheney team won handily in North Dakota. As a "Gore/Lieberman" voter, I could accept that my vote would not be counted on December 18. This ready acceptance is based on two facts. One, the Electoral College set-up as penned by the framers of our Constitution protects the interests of my small rural state. It protects us against the potential tyranny of the vast majority of the voters who live in a relatively few high-density population areas. While we value them as consumers, we know that they have little interest in the problems of the raw-material-producing rural areas of this great nation.

Two, the ballot in North Dakota was a fair ballot that gave my candidate a fair shot at winning. Our ballot met a Constitutional Standard of fairness. It was a rotating ballot that filled the top spot on the ballot with the Gore/Lieberman choice just as often as that top spot was filled with the Bush/Cheney choice as well as all the other presidential candidates. With such a rotating ballot, "winner-take-all" is eminently fair.

This rotating ballot is used in all elections in North Dakota because the Federal Courts ruled in *McLain v Meier* (cite: 637 F.2d 1159, 1980) that the state of North Dakota must change its ballot positioning in order to meet Constitutional muster. In short, anytime one candidate's name appears universally at the top of a ballot, that candidate is likely to enjoy an automatic 5% advantage in that election (cite: 637 F.2d 1166, 1980).

In North Dakota that unfair advantage no longer exists....and I am reassured of the fundamental fairness of the process in spite of the fact that

my "Gore" vote will count for nothing when the Electoral College meets.

In Florida, on the other hand, the Bush/Cheney choice enjoyed a 5% advantage "coming in" due to the fact that the Bush/Cheney choice appeared always at the top of the ballot (by state law) in that state. How can such a ballot scheme be Constitutional in Florida when it was not Constitutional in North Dakota?

But another question is perhaps even more important to me.

How can I "rest easy" knowing that the balancing effect of the Electoral College as intended by the framers of our Constitution is being subverted by an unfair and unconstitutional ballot in Florida as well as other states?

Since we in North Dakota have a fair and constitutional ballot, I as a "Gore" voter can accept defeat in a "winner-take-all" process-- as long as I know that each voter in every state is playing by the same rules.

In November 2000, the voters in Florida were not playing by the same rules. The Bush/Cheney choice was handed a 5% lead before the first votes were counted. In the present circumstances, that unfair advantage seems to be making all the difference.

And I am feeling "hard-put" to see how the value of my vote is enjoying the equal protection of the law.

"s/Harley McLain"
P.O. Box 752
Valley City, ND 58072

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

HARLEY McLAIN,

Plaintiff,

v.

BEN MEIER, Secretary of State
and ALLEN OLSON, Attorney General,

Defendants.

Filed Dec 17,1980
Cletus J. Schmidt, Clerk
U.S. District Court-North Dakota

No. A78-3075

JUDGMENT

Pursuant to the order for judgment entered this date,

IT IS ADJUDGED AND DECREED that N.D.C.C. 16-04-20(4) and N.D.C.C 16-11-06 violate the Fourteenth Amendment to the Constitution of the United States.

IT IS FURTHER ADJUDGED AND DECREED that plaintiff's challenge to the constitutionality of N.D.C.C. 16-11-05(4) is dismissed.

Dated this 17th day of December, 1980.

"s/ PAUL BENSON", CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFIED COPY
Original Filed with Clerk of Court
Attest:
Edward J. Klecker, CLERK
United States District Court
District of North Dakota
By "s/ JoAnn Ordahl"
Deputy Clerk

APPENDIX C

DECLARATION OF INDEPENDENCE

We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed,...

PREAMBLE OF THE UNITED STATES CONSTITUTION

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States.

ARTICLE III. SECTION 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; .... to controversies to which the United States shall be a party;---to controversies between two or more States; [between a State and Citizens of another State;] ---between Citizens of different States;---between Citizens of the same State claiming lands under grants of different States, and between a State, or the Citizens thereof, and foreign States, [Citizens or Subjects].

ARTICLE IV.

Section 1. Full faith and credit shall be given in each State to the public Acts, Record, and judicial Proceeding of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.
Section 2. (1) The Citizens of each State shall be entitled to all privileges and immunities of Citizens in the several States.
Section 4. The United States shall guarantee to every State in this Union a republican form of government,...

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for the redress of grievances.

AMENDMENT XII.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other disability of the President--.....

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 42 U.S.C. Section 1983. Civil action for deprivation of rights.

Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

TITLE 42 U.S.C. Section 1985. Conspiracy to interfere with civil rights
(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway of on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving and securing to all persons within such State or territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Title 28 U.S.C. 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person;

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

MONTANA STATUTE 13-2-301(1)(a)
Close of Registration- Procedure

(1) The election administrator shall: (a) close registrations for 30 days before any election.

NDCC 16-11-06 (declared unconstitutional in 1980)

The [general election] ballot provided for in section 16-11-05 shall be arranged as follows: *The names of the candidates of the party casting the highest number of votes in the state for members of Congress at the last preceding general election shall be arranged in the first or left-hand column of such ballot* (emphasis added); of the party casting the next highest number of votes in the second column; of the party casting the next highest number of votes in the third column; and of such other party as the secretary of state may direct for state officers.

Florida Election Code Title 9 Section 101.151.(4):

The names of the candidates of the party which received the highest number of votes for Governor in the last election in which a Governor was elected shall be placed first under the heading of each office (emphasis added), together with an appropriate abbreviation of party name; the names of the candidates of the party which received the second highest vote for Governor shall be second under the under for each office, together with an appropriate abbreviation of the party name.

Texas Election Code Title 5 Section 52.091(b):

Columns of parties specified by Subsection (a)(1) shall be arranged in descending order of the number of votes received statewide by each party's candidate for governor in the most recent gubernatorial general election, beginning on the left with the party whose candidate received the highest number of votes (emphases added). Columns of the parties that did not have a candidate for governor in the most recent gubernatorial general election shall appear after the columns of parties that had a candidate, and the order shall be determined by a drawing conducted by the secretary of state.

New Hampshire Title LXIII, Chapter 656, Section 656:5, II

The name of each candidate shall be grouped according to the party which nominates the candidate, and *the names of the candidates of the party which receives the largest number of votes at the last preceding state general election shall be listed first* (emphasis added).